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SENATE

REPORT
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JUDICIARY OFFICE BUILDING DEVELOPMENT ACT

MAY 24 (legislative day, MAY 18), 1988.—Ordered to be printed

Mr. BURDICK, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 1934]

The Committee on Environment and Public Works, to which was referred the bill (S. 1934) pursuant to the report ordered by Public Law 99-229 which directed the Architect of the Capitol and the Secretary of Transportation to undertake a study of the needs of the Federal Judiciary for additional Federal office space, to authorize the Architect of the Capitol to contract for the design and construction of a building adjacent to Union Station in the District of Columbia to house agencies offices in the judicial branch of the United States, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

GENERAL STATEMENT

In the opinion of Committee members, this bill fulfills a long overdue obligation of the Congress to provide additional space for the United States Supreme Court, and for the Administrative Office of the U.S. Courts and the Federal Judicial Center which are directly responsible to the Chief Justice of the United States. The current Supreme Court Building, completed in 1935, was designed by Cass Gilbert. No additional space has been added to the Supreme Court building since that time, partly because experts agree that above ground additions or renovations would diminish the beauty and balance of the structure.

As attested to by Former Chief Justice Warren Burger at a hearing held February 3, 1988 before the Subcommittee on Water Resources, Transportation, and Infrastructure, for over 20 years, the Judicial Branch has had an increasingly pressing need for an addi-

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tional building. The 600 employees of the Administrative Office of the Courts are scattered in five locations in leased space throughout the D.C. metropolitan area. An additional 200 employees of the Federal Judicial Center and United States Sentencing Commission occupy other buildings, so that in total 800 Judicial employees are in seven different locations. This promotes neither efficiency nor economy.

Meanwhile, the lease costs for the Federal Government continue to rise. Rents in the National Capital region for the Federal Government have increased by 30 percent over the last 2 years alone. The annual rental bill for the Federal Government is currently about $1.5 billion, and will reach $2 billion by the end of the century. Within the next 10 years, 95 percent of all Federal office leases will come up for renewal.

In response both to the specific needs of the Judiciary and the general need of the Federal Government for more owned buildings, the Committee on Environment and Public Works authored legislation passed by Congress in 1986 as Public Law 99-229. This law directed the Architect of the Capitol in consultation with the Chief Justice and the Secretary of Transportation to study the needs of the Judiciary and the best way to accommodate those needs. The result was a comprehensive report which examined five main options of providing additional space for the Courts:

A. Status Quo (leaving judiciary in current space, which is about 50 percent owned and 50 percent leased space in different locations);

B. Government Build (having the Federal Government authorize and appropriate up front all funds for project);

C. Non-profit Development (using existing or new non-profit entity to develop project, requiring some private and some appropriated funds);

D. Private Development (having private developer build building and manage building for 30 years receiving commissions on leases, and government supply land at less than its economic value, in return for some rental subsidies for courts).

E. Private Development with Economic Participation (where value of land is calculated at market rates, government receives a share of project's profits, and may apply that profit to reduce rental rates for courts).

The Architect recommended alternative D which suggested a mix of public and private sector tenants, primarily because this alternative provided the lowest absolute rental costs to the Courts. But when overall cost to the Federal Government is considered, the total government occupancy option provides equivalent savings to the Federal Government. Moreover, under the total government occupancy option, the rental rates that the Courts will pay are still well below market rates. Therefore, after Committee Members reviewed economic projections and conferred further with the Architect, Courts and consultants, the decision was made to report a substitute bill that will offer the space not needed by the courts first to other government entities (other than Senate or House committee or personal staff), and then if any space remains, to private sector tenants, subject to the approval of the Chief Justice.

Discussion of Major Provisions

BUILDING HEIGHT AND DESIGN

The substitute bill provides that the new building's height will conform to the Building Height Act of 1910 and will "be compatible with the height of surrounding government and historic buildings." The Committee here underscores the importance of constructing a building of monumental character and quality, befitting the dignity of the highest courts in the land. The new Judicial building should complement Daniel Burnham's Union Station and City Post Office. The 1981 Master Plan for the U.S. Capitol indicates the need for sensitive urban design characteristics for this site in order to accomplish those purposes; the Architect of the Capitol has incorporated those in the design requirements. The Architect has solicited bids from world class architect/developer teams who competed in a competition overseen by the Architect and his consultants. The Committee has every confidence that the Architect, as directed by the Commission established in this bill, will see to it that the mass and style of the building are appropriate to the setting.

SAVINGS TO THE FEDERAL GOVERNMENT

In terms of overall costs to the Federal Government, building this building and getting the courts and other agencies out of their current leased and owned space, saves the Federal Government $503 million according to economic consultants. The cost of constructing the new building is estimated to be between $88 and $115 million.

NO APPROPRIATION NEEDED FOR CONSTRUCTION COSTS

Since this project will be built on a "lease-to-own" or "lease-purchase" basis, no advance appropriations will be needed for construction funds. Instead, the costs will be paid by the courts and other agencies out of their rental costs to the private developer who builds the building. At the end of 30 years, the building will be owned free and clear by the Federal Government. The Federal Government provides the land for the project, which has an estimated worth of $31 to $41 million.

DESIGN AND DEVELOPMENT SEQUENCE

The Federal Government owns the development site, squares 721 and 722 on the Capitol grounds. The bill authorizes the Architect to enter into a development agreement with the developer selected by the Architect under the direction of the Commission. The developer will own the building as it is being built and throughout the lease term, which is to be no more than 30 years. At the termination of the lease term, the building reverts to the Federal Government at no additional cost. Both the development agreement and master lease between the Architect and the developer will be executed before construction begins. The Chief Justice must approve all final decisions regarding the architectural design of the building.

The rental rate per square foot of occupiable space will be "in the best interests of the United States and carry out the objectives

of this Act, but in no case may the aggregate rental rate for all space in the building and other improvements produce an amount less than the amount necessary to amortize the cost of development of squares 721 and 722 over the term of the lease." Thus the Committee intends that all government entities in the building pay the same rent per square foot for comparable space.

Because this building is on Capitol grounds, the Architect, and not the General Services Administration [GSA] is the appropriate one to sublease the space not needed by the Judiciary. However, the Committee directs the Architect to work closely with GSA to find appropriate government tenants. According to the bill, the Judiciary has first claim on space it requires, and may assign and reassign its own space as it sees fit. In addition, the Judiciary may require other agencies to vacate space upon 90 days' notice. After the space requirements of the Judiciary are met, the Architect, working with GSA and the Commission, may lease space to other Federal government entities, with the exception of Senate and House committee or personal staff. Other executive, legislative, and independent government entities are eligible to be tenants, including legislative branch agencies such as the Office of Technology Assessment, and the Congressional Budget Office.

In general the Committee favors projects that consolidate government agencies and that move the Federal Government out of costly leased space and into less costly owned space, particularly in the Capital area, where government demands for space will remain great. In keeping with this philosophy, the Committee directs the Architect and GSA to choose government tenants with these goals in mind.

If there are insufficient Federal government tenants, then the Architect may offer any remaining space to the private sector, with the caveat that the tenants must be "compatible with the dignity and functions of the judicial branch offices housed in the building and must not unduly interfere with [their] activities and operations."

Because the Architect may need to hire some additional staff and/or consultants to oversee this project and to lease space not used by the Judiciary, the Committee has established a separate account where the rents paid by tenants will be deposited, and has authorized up to $2 million in additional funds should the need be demonstrated. Moreover, approximately $700,000 in funds which were left over from the original report prepared by the Architect are to remain available for the Architect's use and deposited to this account.

TRAFFIC AND PARKING

The current sites are currently used for Senate staff parking, with a total of 499 spaces. The Architect's report provides that the project will provide 750 underground parking spaces—500 to replace those for the Senate, 155 for the Judiciary, and 95 spaces for other tenants.

Several of the citizen groups who testified at the hearing expressed concern about the parking and traffic aspects of the new building. The Committee therefore directs the Architect in the

design, development, and construction of the building to make every effort to reduce the traffic impact on the surrounding residential community resulting from this new building. The fact that the proposal is to add no more than 250 spaces to those already existing, and the building's close proximity to Union Station and its metro, trains, and bus stops should serve to discourage any large increase in private vehicle use. However, the Committee directs the Architect to pay special attention to this potential problem, and where feasible to include specific measures or incentives in the development agreement and/or the lease to discourage use of private motor vehicles by persons working in or visiting the building.

COMMISSION

The bill establishes a Commission for the Judiciary Office Building whose role it is to direct and oversee the Architect in carrying out his duties under the bill. It includes representatives of the Chief Justice, the House Office Building Commission, the Senate and House Leadership and Majority and Minority Members of authorizing committees.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This Act may be cited as the "Judiciary Office Building Development Act."

Section 2. Findings and purposes.

Section 2(a) states that space is needed for consolidation of activities of the Administrative Office of the United States Courts and for retired justices of the Supreme Court, and this space should be in the vicinity of the Supreme Court; that this development should be consistent with the Master Plan for the United States Capitol; that the cost of leasing space by the judicial branch is high; that the development of this area is necessary to achieve the objectives of the Union Station Redevelopment Act; and that the Judicial Conference of the United States endorsed by resolution the construction of an office building on the Capitol grounds to house the Administrative Office of the United States Courts and other judicial branch offices.

Section 2(b) lists the purposes of the legislation:

1. to implement the report which the Architect of the Capitol submitted to Congress as required by law;
2. to authorize the Architect to acquire by lease space primarily for use by the Judiciary by entering into contracts for the design and construction of a building adjacent to Union Station; and
3. to ensure that the building will be of appropriate design.

Section 3. Construction of building.

Section 3(a) establishes the process through which the Architect of the Capitol will select the developer of the property. The architect/developer teams who have already submitted design proposals will be allowed to revise those proposals to take into account the requirements of this legislation. A new competition may be held if

no proposals are resubmitted, or if the Architect determines that none of the resubmitted proposals is in the best interest of the United States. All final decisions regarding the architectural design of the building are subject to the approval of the Chief Justice.

Section 3(a)(8) sets forth limitations on the size, height, and design of the building. The building is not to exceed 520,000 gross square feet in size above the level of Columbia Plaza and its height shall conform with the Building Height Act of 1910.

Section 3(b) establishes criteria for the development agreement between the Architect and developer. The agreement is to be substantially in accordance with the Master Plan of the U.S. Capitol of 1981 and with alternative D of the Architect's report, except where modifications are made in the legislation. Alternative D recommends that the Government rent the building from the private developer who builds it, paying the purchase price in rent installments over no more than thirty years.

Section 3(b)(2) states that the development agreement shall provide that costs incurred in the development of the building will be at no cost to the United States, except where specifically provided for in the legislation. Title to the land on which the building is built shall remain with the United States. At the end of the lease term, but no more than 30 years from the effective date of the lease agreement, title to the building shall vest in the United States. The development agreement is to include a copy of the lease agreement itself.

Section 3(b)(c) allows for extension of lines from Union Station in order to provide chilled water and steam to the building. If the building is connected to the Capitol Power Plant, the agreement between the Architect and developer shall provide that the latter will bear all costs associated with the installation of the chilled water and steam lines and shall reimburse the Union Station Redevelopment Corporation for an equitable share of the costs incurred by the Corporation in the construction of the extensions. If the new building is connected with the Capitol Power Plant, the Architect shall furnish, on a reimbursable basis, chilled water and steam from the Plant.

Section 3(d) establishes construction standards and provides for periodic inspection by the Architect during construction. This paragraph also exempts the building from those laws of the District of Columbia which relate to building codes, permits, or inspection.

Section 3(e) exempts the property from laws of the District of Columbia relating to taxes. The provisions of this section do not exempt this building from the height requirements of the Building Height Act of 1910.

Section 4. Lease of building by the Architect of the Capitol.

The lease is to be entered into before the development agreement is finalized, and shall include the following terms:

1. the lease period shall not exceed 30 years;
2. the rental rate must at least cover the cost of amortization of the cost of the development of the property; and
3. the Architect must be given the authority to sublease space in the building.

This section also establishes criteria for an accounting system for operation and maintenance and requires that funds for lease payments may be obligated only on an annual basis.

Section 5. Structural and mechanical care and security.

Section 5(a) gives to the Architect the responsibility for structural and mechanical care and maintenance of the building. The Architect will also be responsible for maintenance of the grounds and all other duties and work required for the operation and domestic care of the building. Consistent with his current authority, the Architect may contract out for those services.

Under section 5(b) of the Capitol Police are given responsibility for all exterior and interior security of the building. Nothing in this Act shall interfere with the obligation of the U.S. Marshals to protect justices and others who may occupy the building. The Architect is to reimburse the Capitol Police for their expenses in providing security for the building.

Section 6. Allocation of space.

The Architect is to make space available, on a reimbursable basis, to the judicial branch and to other governmental entities. Upon notice from the Chief Justice, additional space requirements of the Judiciary are to be accommodated within ninety days. The Director of the Administrative Office of the United States Courts shall have the responsibility for the allocation of space among the offices of the judicial branch.

This section authorizes the Architect of the Capitol to sublease space not required by the Judiciary to other governmental entities other than Staff of Members of Congress or Congressional Committees. If there is additional space remaining, the Architect may lease to nongovernmental tenants subject to the limitations of section 6(b)(3). The Architect shall collect rents for space subleased under this section. Funds received under this subsection are to be deposited into a separate account of the U.S. Treasury, established in section 9 of the bill.

Section 7. Commission for the Judiciary Office Building.

A Commission for the Judiciary Office Building is to be composed of the following or their designees:

two appointees of the Chief Justice of the United States, to be selected from among Associate Justices or other Federal judges;

the members of the House Office Building Commission (the Speaker and the Majority and Minority Leaders);

the Majority and Minority Leaders of the Senate;

the Chairmen and ranking minority members of the Senate Committees on Rules and Administration and Environment and Public Works; and

the Chairman and ranking minority member of the House Committee on Public Works and Transportation.

The Commission will be responsible for supervision of design, construction, operation, and maintenance and structural, mechanical, and domestic care and security of the building. The Commission may prescribe rules and regulations regarding the use and oc-

cupancy of all space in the building and the conduct of the Architect in fulfilling his duties under this Act. The presence of seven of the thirteen-member Commission shall constitute a quorum.

Section 8. Repeal of DOT authority.

This section repeals the section of the Union Station Redevelopment Act which gives the Secretary of Transportation the option of constructing a building on this site if he or she feels that it is in the best interests of the Union Station project to do so. This repeal is necessary in order to clear title to the land. The Secretary endorsed the Architect's report prior to its release.

Section 9. Funding.

This section establishes a separate account in the Treasury of the United States for deposit of funds received under section 6. Funds in this account shall be available to the Architect for payment of expenses for care of the building, for reimbursing the Capitol Police as directed under section 5, and for making lease payments under section 4, and for personnel necessary to carry out the objectives of the Act (including consultants).

Section 9(b) directs that the approximately $700,000 remaining from the funds appropriated in the original legislation authorizing a study of the construction of the building be transferred to the Architect for design review, construction inspection, contract administration, and other project costs.

Section 10. Definitions.

This section defines the terms "Architect," "Chief Justice," and "Commission."

Hearing

On February 3, 1988, the Subcommittee on Water Resources, Transportation, and Infrastructure held a hearing on S. 1934. Testimony was taken from former Chief Justice of the Supreme Court Warren Berger; Ralph Mecham, Director, Administrative Office of the U.S. Courts; George White, Architect of the Capitol; Elizabeth Rowe, Committee of 100 on the Federal City; and Dr. David Sellin, Citizen's Planning Coalition of the District of Columbia. Statements from various groups were received for inclusion in the record.

Rollcall Votes

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

During the Committee's markup on April 22, 1988. S. 1934 was ordered reported by a rollcall vote of 15–0.

Regulatory Impact

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation

of the regulatory impact of the reported bill: It is not expected that there will be significant impacts resulting from the enactment of this legislation.

Cost of Legislation

Section 403 of the Congressional Budget and Impoundment Control Act requires each bill to contain a statement of the cost of such bill prepared by the Congressional Budget Office. That report follows:

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 24, 1988.

Hon. Quentin N. Burdick,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 1934, the Judiciary Office Building Development Act.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

James L. Blum,
Acting Director.

Congressional Budget Office Cost Estimate

1. Bill number: S. 1934.
2. Bill title: Judiciary Office Building Development Act.
3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, April 22, 1988.
4. Bill purpose: The bill would direct the Architect of the Capitol to select a developer to construct a building for Judicial Branch offices in Washington, D.C. The developer would be allowed to build on land owned by the United States, but would have to arrange private financing to construct the building. Once the building is completed, the Architect would make lease payments to the developer sufficient to cover the developer's costs over a 30-year period. After that period, title to the building would revert to the United States.

The bill also would authorize the appropriation of $2 million and the transfer of about $0.7 million in unexpended balances to the Architect of the Capitol for additional expenses associated with the new building.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993
Architect of the Capitol Expenses:					
Authorization Level		2.0			
Estimated Outlays		0.7	0.7	0.6	

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993
Increased Rental Payments and Moving Costs:					
Estimated Authorization Level				2.0	1.0
Estimated Outlays				2.0	1.0

The costs of this bill fall within budget functions 750 and 800.

Basis of Estimate: This estimate assumes that S. 1934 will be enacted prior to the beginning of fiscal year 1989 and that the amounts authorized will be appropriated. Further, the estimate assumes that the construction will take three years and that the building will be ready for occupancy in 1992.

New Building. This bill would direct the Architect of the Capitol to enter into a contract with a developer that obligates the government to make 30 years of lease payments without advance appropriations. If the building cost $75 million (as projected by the Architect of the Capitol), the government would have to make about $8 million in lease payments each year for 30 years.

These payments would not represent the budget impact of the new building, because they would replace current lease payments for other space that would not be necessary once the building is completed. However, the new building still would affect the government's costs for office space. Currently, the Judicial Branch rents government-owned and government-leased space from the General Services Administration (GAS). Once the new building is completed certain judicial offices would move into the new space and would pay rent to the developer (through the Architect of the Capitol). GSA would no longer need the government-leased space now occupied by the relocated judicial offices. Also, GSA would move other federal agencies into the government-owned space vacated by the judicial offices, reducing further the amount of leased space needed by GSA. Assuming no change in the amount of space allowed per employee or in the cost of building securtiy and maintenance, this series of moves would amount to a shift from one set of leased space to another approximately equivalent set.

The potential cost of this shift would depend on the amount of rent charged for the two sets of leased space. In the near-term—fiscal years 1992 and 1993—the government's lease payments on the new space would probably exceed the amounts paid on the space given up, although the increase probably would not exceed $1 million annually if the initial estimates of lease costs for the new building are accurate. In later years, if the rent paid on the space given up would have increased, while payments on the new space remain unchanged, the shift would lower aggregate rent costs for the government. On the other hand, it is possible that the cost of GSA-leased space would not increase significantly in the future, especially if excess rental space in the Washington, D.C. area constrains rent increases. In this case, the rent for the new judiciary building could continue to exceed the rent paid for the space currently leased, thereby increasing aggregate rent costs for the government.

Moving Costs. Based on information from GSA, we estimate that moving the approximately 800 judiciary employees from seven locations around the Washington, D.C. area and other related moves would cost about $1 million in 1992.

Architect Authorization. Another effect of this bill would stem from the $2 million authorization for the Architect. Because the bill does not specify to which year the authorization applies, we assume that the Congress would appropriate the funds in 1990, in time for the Architect to begin paying the additional administrative, security, and maintenance expenses associated with the new building as it nears completion.

6. Financing mechanism: S. 1934 authorizes the Architect to select a developer to raise funds privately and build federal office space on federal property. The Architect would lease the building from the developer, making only annual rental payments, for about 30 years. Then the Architect would own the building. This approach serves as a substitute for the government providing funds itself to construct a federal building. Instead, the government would be using privately borrowed resources to construct the building, repaying them over time in the form of lease payments. This would have the effect of spreading the outlay impact over many years, instead of just during the construction period. The bill specifies that obligation of funds for lease payments may only be made on an annual basis.

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: James Hearn (226–2860).

11. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Changes in Existing Law

Section 12 of Rule XXVI of the Standing Rules of the Senate requires publication of any changes made in existing law by the reported bill. This bill makes no changes to existing law.

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